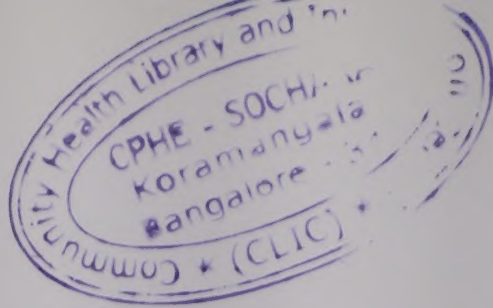


SICHREM Study Series No. 3

# A Report on the Progress of the Karnataka State Human Rights Commission



**South India Cell for Human Rights Education and Monitoring**



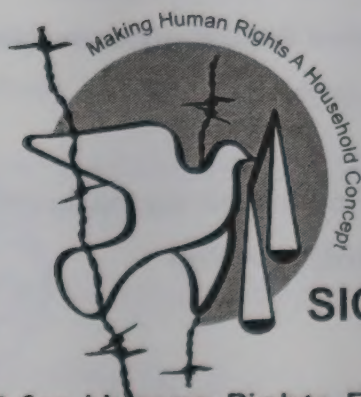
165/18

CLIC

SOPHEA



# A Report on the Progress of the Karnataka State Human Rights Commission



South India Cell for Human Rights Education and Monitoring

***Other SICHREM Study Series***

No. 1 A Study on the Implementation of the Karnataka State Action Plan to Eliminate Child Labour: Shouldn't all children be smiling? (by Sucharita S. Kuchibhotla)

No. 2 A study on Migrant Construction Labourers in Bangalore: Into the World of Construction Labourers (by H.S. Veena)

***SICHREM Study Series No. 3***

**A Report on the Progress of the Karnataka State Human Rights Commission**

*Sichrem is a project of:*

**MANASA Centre for Development and Social Action**

**I/ F, Anjanappa Complex, # 35 Hennur Main Road,**

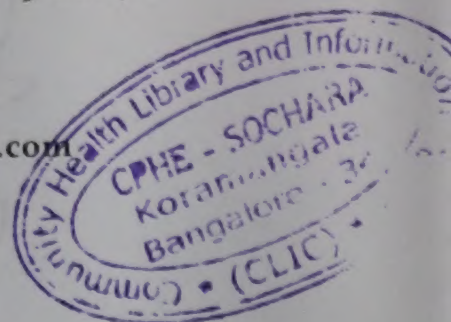
**Lingarajapuram, St. Thomas Town Post, Bangalore-560084.**

**Phone: + 91-80-25473922 / 25804072 - 73,**

**Fax: +91-80-25492856**

**E-mail: [contact@sichrem.org](mailto:contact@sichrem.org) / [msichrem@gmail.com](mailto:msichrem@gmail.com)**

**[www.sichrem.org](http://www.sichrem.org) / [sichrem.wordpress.com](http://sichrem.wordpress.com)**



**Printed at: National Printing Press, Bangalore**

**RHR-100**  
**16578**



## Acknowledgments

As a human rights organisation, it is our mandate to strengthen the functioning of the human rights institutions. This strengthening process can happen only through a process of monitoring. The purpose of this study was to objectively look at the progress of the Karnataka State Human Rights Commission. This need not be construed as a harsh criticism on any functionary of the Commission. There are no personal stakes involved in this study and the only aim is to give every stakeholder an opportunity to come out in support of the Commission, who we are convinced, is making sincere efforts for the protection of human rights in the State.

Though there was no formal collaboration between SHRC and SICHREM to conduct this study, we appreciate that the Chairperson and the members of the Commission were kind enough to read the report and offer their comments, suggestions etc., in an informal meeting.

This report would not have been possible without the help, assistance and cooperation SICHREM has received from various individuals. SICHREM would like to thank:

- Patrick Arnold, an English lawyer who volunteered with SICHREM from Challenges Worldwide (CWW) conducted this study and put together the first draft.
- Justice Michael F. Saldanha, Judge, High Court of Karnataka (Retired) for providing an appropriate exordium.
- Henri Tiphagne, Member, National Core Group of NGOs of the NHRC, Executive Director, People's Watch and Member, The Asian NGOs Network on National Institutions for providing an appropriate preface.
- Geeta Menon, Stree Jagruti Samiti and PB'Dsa, PUCL-K.
- Stephanie Ng, an Australian lawyer who volunteered with SICHREM and edited this study.
- Mr Koshy Mathew, President of SICHREM, for the final editing and pagemaking of this study.
- Jyothi of SICHREM, for constantly coordinating with all the above.

**Mathews Philip, Executive Director**



## Glossary

ANNI	Asian NGOs Network on National Institutions Commission Karnataka State Human Rights Commission
First Annual Report	First annual report of the Karnataka State Human Rights Commission, 2007-2008, Government Press, Bangalore
IAS	Indian Administrative Service
Kannadiga	Inhabitant of Karnataka
National Government	Government of India
NGO	Non-governmental organisation
NHRC	National Human Rights Commission
Paris Principles	Principles Relating to the Status and Functions of National Institutions for the Promotion and Protection of Human Rights - commonly known as the 'Paris Principles' - set out the minimum standards required by national human rights institutions to effectively fulfil their role. The Paris Principles were endorsed by the UN Commission on Human Rights (Resolution 1992/54 of 3 March 1992) and the UN General Assembly (Resolution 48/134 of 20 December 1993, annex)
PHRA 1993	Protection of Human Rights Act 1993
PUCL-K	People's Union for Civil Liberties, Karnataka
Second Annual Report	Second annual report of the Karnataka State Human Rights Commission, 2008-2009, Government Press, Bangalore
SHRC	State Human Rights Commission
State Government	Karnataka State Government
State Legislature	Karnataka State Legislature
Suo moto investigation	Investigation instigated on the Commission's own initiative

# Contents

1. Acknowledgments	3
2. Glossary	4
3. Exodium – Justice Michael F. Saldanha	7
4. Preface – Henri Tiphagne	11
5. Introduction	13
6. Independence and transparency	14
No role for civil society	14
An independent cadre?	16
A problem of resourcing	17
A lack of transparency	19
7. Dealing with complaints	20
The growing backlog	20
Investigational capabilities	20
An independent investigation?	21
The Bangalore bias	23
A toothless tiger?	24
8. Human rights education	26
9. Relations with other bodies	27
Coordination with the NHRC	27
Encouraging the efforts of NGOs?	27
Relationship with the State Government	28
8. Conclusions and recommendations	30
9. Notes	35







## Exordium

The Police Reforms Commission in the United Kingdom used an interesting expression when they stated that it was necessary to “Police the Police”. The Human Rights Commissions (HRCs) set up at the National and State levels have not been able to achieve their objectives despite being headed by some of the finest persons from the Indian judiciary. In the present Report produced by SICHREM, the selection process has been seriously questioned. While admitting the position that so far the mechanism has thrown up the best candidates but that unless it is overhauled, this may not happen in the future is a perfectly valid apprehension. To my mind, since the idea of a National Judicial Commission is gaining ground for the selection and appointment of High Court and Supreme Court Judges, that body would be ideally suited to undertake this process. I shall frankly indicate the reason for this in so far as a truly top quality Judge while in service, would necessarily have to come down strongly on the powers that be if one is to be honest and true to one’s commitments and Constitutional obligations, and the price paid for this is that the person would be considered an “uncomfortable” candidate to head these Commissions. That is the paradox because it is precisely this category of human being that we need as the head of the HRCs.

Many times have I put forward the recommendation that the High Courts and the Supreme Court should be professionally managed instead of by Judicial Officers doubling up as Administrators and secondly that, the institution should be financially independent in so far as Budget estimates be prepared and a grant be made over to the institution by the Government with no question of dependency in financial matters. I have had the long and painful experience of the entire judicial system being cramped for want of money, equipment, transport and other infrastructure only because the Courts are dependant on the Government for sanctions. I have also seen the reverse position where the Chief Justices have been on ultra friendly terms with the Government and the



Government in turn pampering them with the most liberal sanctions and as a quid pro quo, every complaint against the Government is soft-peddled and more importantly, Public Interest Litigations exposing the most serious of atrocities form part of the 100% dismissal record. If the Commissions are to function meaningfully, they must be financially independent and professionally managed without any dependency on recruitment from the State Government which is most destructive of the very concept of independent functioning.

It is a matter of plain common-sense that where the Government and the State Machinery is in the dock as in the case of the unending number of so-called encounter deaths in Karnataka, all of which, I have found to be fake, if the Commission Office if manned by State Government employees, they can and will sabotage the entire enquiry and even the best Presiding Officers can be driven to frustration. There can be no two opinions about the fact that with financial independence the personnel will also have to be totally independent of the State Government. I shall illustrate how ridiculous the present set up is, if in a fake encounter case, the investigation / enquiry by the State Human Right Commission (SHRC) is to be done by a Police Officer who belongs to that very Department as the murderers! If he does not cover up for his colleagues, it would be surprising. I am not going into the other major aspects relating to integrity etc. but these are also of paramount importance.

On a very responsible basis and particularly after the violence in the Karavali area, I have found that the Human Rights violations, both as far as the scale and intensity are concerned in Karnataka are among the worse for any State in India. This may come as a surprise to many people but I say it on very reliable evidence. If the SHRC is to at all even contain these atrocities, leave alone stop them, the very first step that is absolutely essential is that the Commission has a full fledged set up in each District. There is no part of Karnataka that is free of these sins and I will illustrate as to why the very important suggestion in this Report is required to be not only highlighted but implemented forthwith. When I have enquired with victims in different parts of this State, and with all the social workers and NGOs who have very much wanted some form of redressal, the answer in every case was that the accessibility factor when the Commission is based in Bangalore is less than a shocking 1%. It is not only the time, the distance and the expenditure that are insurmountable hurdles but the fact that like criminal offences such as custodial deaths and fake encounters, speed is of the essence because the culprits particularly if they are Government Officers or police are very fast at covering up their tracks. Again, the witnesses, scene of offence and everything else is



localized and no effective enquiry can ever take place at the State Headquarters. Are we to therefore assume that despite having the SHRC that 99% of Human Rights violations go virtually unnoticed.

The simple law of consequences postulates that when Human Rights atrocities are not checked, stopped and effectively put down with deterrent action that they ESCALATE OUT OF CONTROL. The simplest instance is of police violence and custodial deaths which has increased in the State of Karnataka by 100% in the last five years alone. The other recommendation in this Report is centered around effective redressal. To my mind, the Commissions should not be rendered toothless nor should they be dependent on the good sense of the Government which itself is the perpetrator of the atrocities or for that matter on the Courts which always claim to be over burdened and therefore unconcerned with what is going on. These Commissions are presided over by Judicial Officers and assisted by hand picked human beings and they MUST be armed with all the powers of awarding just compensation and not flea bite compensation but more importantly of directing prosecutions. In appropriate cases, the Commission should have the power to direct the immediate suspension or transfer of the errant officer, as otherwise, the atrocities only get compounded. To quote an example, when I investigated into the Church attacks in Dakshina Kannada, I found one DC and three Police Officers who have been treated like the god children of the Home Minister and whom nobody could touch and these four men were responsible for atrocities that would have put the Nazis to shame. If there is to be any meaningful stoppage of atrocities, such preventive action is necessary and it will have to be followed by deterrent action against the culprits so that there is some fear generated among the public servants who are today functioning as though they are a law unto themselves. *More importantly, the citizens of this sub-continent have to at last feel confident that in the 60 year old Republic of India there is some meaningful respect for the concept of Human Rights. The National and State Human Rights Commissions were set up precisely because the Courts had failed in this vital area and if these institutions also fail it will be total disaster.*

**Justice Michael F. Saldanha**  
**Judge, High Court of Karnataka (Retired)**





## Preface

I wish to congratulate SICHREM – which we from People’s Watch consider as a ‘sister’ organisation of ours - on this timely, effective and purposeful report on the functioning of the Karnataka State Human Rights Commission (KSHRC), whose establishment has been strongly advocated by SICHREM for the past one decade, if not more. I am also aware that SICHREM has been working very closely with the KSHRC since its inception on a variety of issues and therefore, perfectly understand the great embarrassment it would have also been for SICHREM with the KSHRC not coming forward to cooperate in the study.

It is pertinent for all of us to also note that in this country today the phenomenon of national human rights institutions (National and State) is very important since there are more than eight such institutions at the national level catering to thematic subjects like human rights, women, children, minorities, Scheduled Castes, Scheduled Tribes, right to information, disability, and a further 150 such institutions which are statutory in nature.

This report assumes even greater significance in the background of the International Co-ordinating Committee of National Human Rights Institutions’ (ICC – NHRIs) Sub Committee on Accreditation (SCA) having come forward last year in June with their General Observations. It has now been mandated that the NHRIs who are members of the ICC NHRIs will be required to apply for re-accreditation with the SCA furnishing a statement of compliance with the Paris Principles but in strict adherence to the General Observations (GA). It is this accreditation that will provide the SCA the basis of granting “A” grade status in order to, in turn enable the NHRI to having speaking rights in the United Nations. The National Human Rights Commission of India (NHRC) will be taken up before the SCA of the ICC – NHRIs in November 2010 in Geneva.

The GA emphasises the following main areas – namely, the competence

and responsibilities of the NHRIs, composition and guarantees of independence and pluralism, their methods of operation and additional principles concerning the status of commissions with quasi-judicial competence. Some of the sub themes that are addressed at length in the GA deal with subjects like cooperation with other human rights institutions, ensuring pluralism and transparency in the selection and appointment process of the commission, the presence of government representatives on national institutions, staffing by secondment etc.

It is greatly satisfying therefore to note that this report by SICHREM also focuses in its content on many of these concerns that have been addressed by the SCA in its GA. It is therefore a pity that the KSHRC - one of the most recently established of the SHRC in the country and, in my own personal opinion, a SHRC that is really responsive with all its limitations - could not collaborate with SICHREM on this report because that would have been a model for the various NHRIs in India to follow.

I appreciate the findings as well as the recommendations that have come out of this report - something that all NHRIs in India will do good to read, reflect and situate this report in their own context.

Can it therefore be possible for all NHRIs in India to undertake a public audit of their work in the light of the GA of the ICC - NHRIs? If they do not do this, it is time for Parliamentarians, Legislators and other civil society organizations to follow this example of a citizens' report by SICHREM and in our country to make sure that these institutions are made accountable by such exercises. If not, the clock is ticking fast to lead to a situation where the public despair will take different forms that may not be democratic and it is none other than NHRIs themselves who will be responsible. Can civil society organizations follow the path laid by SICHREM in monitoring of NHRIs in India?

**Madurai**

**19th February 2010**

**HENRI TIPHAGNE**

Member, National Core Group of NGOs of the NHRC,  
Executive Director, People's Watch and Member,  
The Asian NGOs Network on National Institutions.



# Progress of the Karnataka State Human Rights Commission

## INTRODUCTION

The month of December 2006 was a high point for human rights in Karnataka. After a long and hard fought campaign, the High Court of Karnataka, whilst passing an order on a case of custodial death,<sup>1</sup> directed the State Government to set up a state human rights commission within six months. This marked the successful conclusion of a decade long campaign to force the State Government to act. Sichrem played an active role in this campaign by organising petitions, meetings and workshops and through ultimately helping to file a Public Interest Litigation with the High Court of Karnataka. Since the Commission's formation in July 2007, Sichrem has had weekly contact with its staff and has filed numerous complaints on behalf of victims.<sup>2</sup> The Commission has now been operating for over two years, and Sichrem would like to take this opportunity to evaluate its performance to date.

Sichrem and the other human rights defenders interviewed as part of this study are united in their view that the formation of the Commission has improved the situation for victims of human rights violations in Karnataka.<sup>3</sup> There is a general view that the Commission has made a good start and is doing some good work. It has also been commented that the time taken to dispose of complaints is less than was the case when a complaint to the NHRC was the only option.

Whilst there are certainly successes to report, there are also serious concerns about the Commission's performance. These concerns are underpinned by the attitude of the State Government towards the Commission, which is characterised by neglect in terms of the resources that are allocated and at times, by outright hostility. There are also deep

structural weaknesses in the Commission's recruitment procedures and investigational capacities that significantly undermine its independence. Furthermore, the Commission's failure to carry out any real efforts in the field of human rights education means that there is very little focus on prevention.

The main indicators against which the performance of the Commission will be measured are the standards embodied in the Paris Principles and the functions of the Commission as set out in the PHRA 1993.

Unfortunately, despite Sichrem's best efforts and despite the Commission's duty to encourage the efforts of NGOs, the Commission has refused to cooperate with this study.<sup>4</sup> No reason was given for this refusal. Sichrem is saddened that the Commission has missed an opportunity to facilitate the constructive appraisal of its work. In some instances, which will be highlighted, the conclusions of this report have been limited due to a lack of information. A copy of this report has been sent to the Commission and to relevant government agencies. Sichrem sincerely hopes that these parties take on board the recommendations set out in this report and instigate some much needed changes with a view to promoting the interests of victims of human rights violations in Karnataka.

Due to time constraints, it has not been possible to carry out a comprehensive survey of the views of all the human rights defenders who deal with the Commission. In consequence, although there has been some attempt to survey the views of other organisations, this report is mainly written from Sichrem's perspective.

## INDEPENDENCE AND TRANSPARENCY

### No role for civil society

The need to have senior leaders of proven quality and independence at the helm of any human rights institution is of paramount importance, because it is frequently their actions that set the tone for the activities of the institution as a whole.<sup>5</sup> As a result, the human rights community, including the participants in the workshop responsible for drafting the Paris Principles, has placed great emphasis on the appointment procedures to human rights institutions.<sup>6</sup> The Paris Principles dictate that a human rights institution should be established in such a way so as to ensure pluralism and independence. The current appointment procedure to the Commission, as set out in the PHRA 1993, does not have adequate safeguards to ensure that these goals are met.



Each SHRC consists of a Chairperson and a Member, who must both be former members of the judiciary, and a further Member who has knowledge or practical experience of human rights.<sup>7</sup> All three office holders of a SHRC are appointed by the State Governor on the basis of a recommendation from a committee, which includes the leaders of both the ruling and opposition parties in the State Legislature.<sup>8</sup> This appointment procedure is completely opaque. No publicly available shortlist is drawn up and there is no opportunity for members of civil society to participate in the selection process in any way. Even more surprisingly, there is no specific requirement in the PHRA 1993 that the Chairperson or Members need to have a demonstrated commitment to the protection of human rights.

In Karnataka, the officeholders are currently Chairperson Justice Nayak, Member Sri Ramappa Hanuman Tappa Raddi and Member Sri Bannikuppe Parthasarathy, IAS (retired).<sup>9</sup> Neither Sichrem, nor the other Karnataka-based human rights defenders interviewed for this report, have any particular issue with these three individuals, although the fact that Member Parthasarathy is a former IAS staff member may have created an initial perception that his independence was questionable. Fortunately, Member Parthasarathy's work and actions have proved that this perception is invalid. Chairperson Justice Nayak, in particular, is perceived as being independent, not least due to his willingness to publicly criticise the State Government.<sup>10</sup> Having said this, the independence of the current commissioners would seem to be more a matter of luck rather than design, and there is a fear that future Chairpersons and Members may not be so independent. ANNI has concluded that appointments to most SHRCs are "*extremely political*" and there is an acute awareness at Sichrem that this is the case."

Even if the Commission is currently perceived as independent, it cannot be argued that the choice of three men fulfils the pluralism criteria. Whilst it is true that retired female members of the judiciary who have reached the requisite level of qualification are few and far between, there are plenty of women in Karnataka with the requisite knowledge and practical experience with human rights who could be asked to serve in the place of the non-judicial member. The pluralism of the Commission could be further improved if the PHRA 1993 were to be amended so that the structure of the SHRCs was brought into line with that of the NHRC. At a national level, the chairpersons of the national commissions for minorities, Scheduled Castes, Scheduled Tribes and women automatically become *ex officio* members of the NHRC.<sup>12</sup> If the chairpersons of the state level equivalents of these commissions were automatically members of the SHRCs, it would not only increase pluralism, but would also encourage coordination, prevent over-

laps and allow the other commissions to make use of the SHRC's greater powers.<sup>13</sup> The current appointment procedure is not fit for purpose. While it is possible for the State Government to try and better comply with the Paris Principles within the confines of the current system, it is the Central Government that needs to take urgent action to bring the procedure up to scratch.

### **An independent cadre?**

The Paris Principles require that a human rights institution should have its own staff. This requirement is essential because without staff who are independent, both objectively and in the eyes of the public, a human rights institution cannot function effectively. At the current time, the independence of the Commission is undermined because the State Government's control over Commission personnel also extends to the recruitment of staff.

The Commission is not free to hire staff with the requisite qualifications according to its needs. All posts at the Commission must be created by the State Government pursuant to official orders, some of which pre-date the Commission's formation.<sup>14</sup> This undermines the independence of the Commission and reduces its ability to respond to changing circumstances. For example, in the Second Annual Report the Commission has to plead with the State Government to create a post for a direly needed registrar.<sup>15</sup> If the Commission were to have its own budget to recruit staff, it could simply hire a registrar, but under the current system, the Commission has to expend time and effort lobbying the recalcitrant State Government.

Once a post is created, the Commission cannot always just go ahead and hire the required staff member. Over a third of the Commission's staff are deputed from the State Government and the police rather than hired directly by the Commission.<sup>16</sup> The impact of these deputies on the culture of the Commission is disproportionate to their number due to the fact that they generally tend to occupy the more senior positions.<sup>17</sup> This practice is undesirable because the independence and human rights expertise of such deputies is highly questionable. There is a real danger that the deputies' connections with the State Government or with the police may seriously impact upon their ability to exercise independent judgement. The danger is exacerbated by the fact that many of these individuals have to return to the departments from which they originated, and this may lead to a real unwillingness to be too critical of their former departments for fear of damaging future career prospects. Questions have also been raised in relation to the suitability and skills of the



deputies. In Sichrem's experience, most deputies do not have the requisite knowledge of, and commitment to, human rights. Moreover, it is also not uncommon for deputies to be IAS members who have been brought out of retirement and who find it difficult to adjust to the fast pace of the Commission.

To make matters worse, it seems that in many cases the State Government fails to even consult with the Commission before deciding to provide a particular deputy. When the services of the Secretary, Sri Ramamurthy, were withdrawn he was replaced by Sri Ganeshan without any consultation with the Commission.<sup>18</sup> After "*highly objectionable misconduct*" and a failure to "*adjust to the environment*" of the Commission, Sri Ganeshan was relieved from his duties.<sup>19</sup> At the Commission's request, the State Government commenced disciplinary action against Sri Ganeshan, but the case was subsequently closed before allowing the Commission to react to Sri Ganeshan's initial reply to the allegations against him.<sup>20</sup> As the Commission highlights, "*the [State] Government by seeking a response of the Commission to the allegations by Sri P. Ganeshan assumed the role of supervisor, controller and official superior over the affairs and working of the Commission, which power the [State] Government utterly lacks under the [PHRA] Act*".<sup>21</sup> In short, there can be no doubt that the State Government retains firm control over the recruitment and sometimes the management of Commission staff and, at times, this makes a mockery of the Commission's supposed independence.

## A problem of resourcing

In contravention of the requirements set out in the Paris Principles, the Commission is wholly dependent on grants from the State Government and is therefore subject to its financial control. There is no obligation on the State Government to provide a minimum amount of guaranteed funding and the amount granted is entirely at its discretion.<sup>22</sup> This situation is unacceptable and the Commission, the other SHRCs and the NHRC need statutory guarantees in the PHRA 1993 that their funding cannot be withdrawn at the whim of the administration.

The Paris Principles also require that human rights institutions be provided with adequate levels of funding. The Commission's requests to the State Government are focused upon requests for staff and additional infrastructure rather than requests for funding.<sup>23</sup> As far as Sichrem is aware, the Commission does not question whether it would be more desirable for it to be given its own budget that it could use to hire its own staff and premises. Due to the limited publicly available information about the Commission, it is only possible to make a cursory assessment

of the Commission's requests for staff and infrastructure that it has made in its annual reports and in the media. As described below, for the most part Sichrem agrees that the Commission direly needs more staff and better infrastructure and is of the view that the current shortfalls are having a significant impact on the Commission's ability to carry out its functions. The issues of staff and infrastructure are interconnected, but for the sake of clarity, they will be handled separately here.

The Commission currently has 76 sanctioned posts across its Administrative, Law and Investigation divisions.<sup>24</sup> According to the Second Annual Report, it requires approximately an additional 105 posts including: additional staff members to assist the Chairperson and Members,<sup>25</sup> 14 additional posts in the Law division, including an Additional Registrar,<sup>26</sup> and 86 additional posts for the Investigation division, most of whom it is envisaged would be drawn from the police.<sup>27</sup> The Commission's plea that it is in desperate need of staff members is illustrated by the problems it has been experiencing disposing of cases (see the "Dealing with Complaints" section below). In the experience of Sichrem and the other human rights defenders interviewed for this report, the Commission's plea for extra staff, to both investigate complaints and deal with them internally, is a valid one.<sup>28</sup> As the Commission itself points out, the need for a strong investigation team is particularly pressing in light of the fact that many complaints are currently being referred for investigation to the jurisdiction police officers against whom the complaints have been made.<sup>29</sup> Finally, if the Commission's plea for divisions to be set up in districts outside of Bangalore Urban is complied with, then further staff will be needed in addition to the posts discussed above.<sup>30</sup>

The Commission argues that it has not been given "*sufficient accommodation to function effectively.*"<sup>31</sup> At present, the Commission has 1625 sq ft on the fourth floor and the entire third floor of the Fifth Phase Block, but it requires at least four entire floors of that Block.<sup>32</sup> This space is required because the Commission is of the view that it needs (as a minimum) three Court Halls, a Library, Conference Hall and sufficient accommodation to locate its offices.<sup>33</sup> Furthermore, the Commission argues that the public currently does not have enough space to make proper representations.<sup>34</sup> The Second Annual Report states that, in July 2007, the Minister for Law visited the Commission and saw that the current space was inadequate and consequently wrote to the Chief Secretary to insist that more space should be provided.<sup>35</sup> Whilst it is not possible to fully evaluate these demands, Sichrem is also of the view that the Commission does not have sufficient accommodation, especially in light of the fact that both the Commission and Sichrem believe staff



numbers should be increased. Sichrem staff members have noticed that members of the public often have to sit outside the building to take their turn to make their complaint. Sichrem is also concerned that the Commission is housed in a government building with other government departments in a government complex. This hardly does much to inspire confidence in the independence of the Commission and, in consequence, it should be a medium term goal for the Commission to have accommodation that is geographically separate from other government buildings. In the short term, Sichrem joins the Commission in requesting that the State Government urgently provides more resources so that the victims of human rights violations in Karnataka can receive better access to the Commission's services.

### **A lack of transparency**

The appointment process to the Commission is not the only aspect of its activity that lacks transparency. It has become abundantly clear during the research stage of preparing this report that finding information about the Commission and its activities is a difficult, time consuming and frequently unsuccessful process. If the Commission is to be taken seriously as a defender of human rights and democracy, it must take its duty to be accountable to the public seriously and must openly release information so that its performance can be evaluated. The failure on the part of the Commission to make proper information readily available to the public, either in its annual reports or elsewhere, about compliance with its recommendations and about the issues to which complaints relate also makes it difficult to make the State Government and other authorities accountable.<sup>36</sup> Despite being located in the technology capital of India, the Commission has not even made the minimal outlay necessary to make a basic website. A website, with information about the complaints procedure, complaints statistics, statistics relating to the State Government's compliance with recommendations and with access to the Commission's annual reports, would greatly help to improve accountability. Even though the Commission has annual reports, it does not make them readily available to human rights defenders. Obtaining a copy of the report requires a specific request, whereas accountability would be improved if the Commission were to be proactive and send out its annual reports directly to interested NGOs and civil society groups.<sup>37</sup> The Commission's annual reports also fail to provide any breakdown of how the grant given by the State Government is spent. The omission of this information deprives the public of the right to scrutinise how effectively the money they pay in taxes is being used.<sup>38</sup> The Commission is also legally obliged to 'publish' all inquiry reports, together with comments and details from the State Gov-

ernment describing what actions have been taken or are proposed.<sup>39</sup> Sichrem is certainly not aware of the publication of any such documents and, if they have been published, the Commission's interpretation of the word 'publish' must be a very narrow one.

## DEALING WITH COMPLAINTS

### The growing backlog

Complainants are being forced to wait too long to have their cases dealt with and disposed of. This delay undermines public confidence in the abilities of the Commission. In the period between July 2007 and March 2008, the Commission received 1872 complaints and this figure increased to 5579 in the period between April 2008 and March 2009.<sup>40</sup> This increase in complaint numbers is positive in that it shows greater public awareness of the Commission and is potentially also evidence of a certain level of public confidence in the Commission's ability to deal with complaints. However, the Commission has failed to keep up with the pace. At the end of March 2009, there were 3907 cases pending as compared to 905 in March 2008.<sup>41</sup> Staff members at Sichrem have reported that it generally takes a year to dispose of a case after registration and in some cases it can take up to two years.

The Commission gives a clue in its First Annual Report as to what may be causing the delay when it states that cases are pending due to the want of investigations and comments on inquiry reports.<sup>42</sup> As such, the police and other bodies entrusted with the task of producing inquiry reports need to comply with the time limits set by the Commission while victims, NGOs and other relevant parties also need to ensure that comments on such reports are provided in a timely manner. Sichrem recognises this problem and agrees that the backlog is also caused in no small part by the State Government's failure to give the Commission adequate resources. However, this should not be an excuse for inaction. The Commission should examine its own procedures and the resources currently available to it to ensure that it is working efficiently with what it has. For example, as is further discussed below, making use of the investigatory capabilities of NGOs is one way in which the backlog of cases could be reduced at minimal expense. If no action is taken, and the number of complaints received continues to increase, the backlog of cases will increase and the public will lose confidence in the Commission's ability to deal with their complaints.

### Investigatory capabilities

The Commission has a duty to inquire into reports of human rights violations both on the basis of complaints by victims and NGOs and on a suo



moto basis.<sup>43</sup> In Sichrem's experience, the Commission is generally good at managing the early stages of the complaints process and Sichrem staff have not reported a single instance where the Commission has failed to register a complaint. There is also a general view that the Commission gives the right directions to investigate (or otherwise) in the initial stages of a complaint. As will be discussed below, it is once the investigation is ordered, that the problems emerge. The Commission is also taking action to investigate complaints suo moto on the basis of press reports. Out of the 5,579 cases registered during 2008-2009, 1,264 suo moto cases have been taken up.<sup>44</sup> This is a significant improvement from the 92 cases that were taken up suo moto by the Commission in 2007-2008.<sup>45</sup> Sichrem applauds this effort and urges the Commission to continue to increase the number of suo moto cases in 2009-2010.

### **An independent investigation?**

Although the Commission generally gives the right directions to investigate an alleged violation, the actual job of investigation often ends up in the hands of the wrong people. With an Investigation division which consists of only 25 people,<sup>46</sup> the Commission does not have the capacity to investigate most complaints using its own staff. As the Commission acknowledges, it is common practice that when complaints against the police need to be investigated, such complaints are referred to the same jurisdictional police officers against whom such complaints are made, by the authority directed to investigate by the Commission.<sup>47</sup> This practice severely compromises the independence of the resulting reports and the integrity of the complaints process as a whole. The Commission can very well utilise the investigatory capabilities of NGOs, for example 'Special Rapporteurs'. The case of Sub-Inspector Vikas Lamani is just one example of a complaint that Sichrem has worked on, where the police report, which was produced pursuant to the Commission's direction, was partisan and unreliable. Sichrem made a complaint to the Commission on the basis of reports in *The Deccan Herald* and *The Hindu* that on 19 January 2009, Belgaum Superintendent of Police, Sonia Narang, had physically assaulted Sub-Inspector Lamani.<sup>48</sup> The Inspector General of Police for Belgaum Northern Range was requested to carry out an investigation into the matter. A report, dated 5 May 2009, was duly produced in which 22 people, most of whom were police, were interviewed. On closer inspection, the investigating officer had failed to interview a single one of the 12 or 13 members of the public that Sub-Inspector Lamani claimed in his statement had witnessed the assault. The police officers nearby were evasive in their responses to the inquiry and all claimed to have been too far away from the incident to see

what happened.

The Commission does have limited powers in its armoury that can be used in such eventualities. Under the PHRA 1993, it has the power to independently investigate any human rights violation if the relevant authority does not deliver its report on time or if that report is not deemed satisfactory.<sup>49</sup> Due to the fact that there is only limited information about the Commission in the public arena, it has not been possible to find out the extent to which the Commission has used this power in the event a report is either late or unsatisfactory. As far as Sichrem is aware, this power was not used in the case of Sub-Inspector Lamani and has not been used in any other cases that Sichrem has dealt with. The Commission also has the power to utilise the services of any officer or investigation agency of the State Government to investigate so long as the State Government agrees. In the event that such an officer does investigate, the Commission can make inquiries into the correctness of the report submitted.<sup>50</sup> Sichrem has never heard of an instance in which this power has been used. The Commission recognises that investigation reports are not being referred to the right people<sup>51</sup>. In consequence, the Commission should be using every power it has to try and ensure that the integrity of the complaints process is not further prejudiced.

This problem of alleged perpetrators of human rights violations being appointed to investigate their own potential violations is not confined to the Commission. Both a recent report from ANNI<sup>52</sup> and a report from Human Rights Watch<sup>53</sup> make the point that this is also an issue with the NHRC. The Commission, Sichrem and the human rights defenders interviewed<sup>54</sup> are united in the view that the Commission needs its own pool of investigators to draw upon. However, the subject of whether these investigators should simply be deputed from the police, as the Commission has requested, is more controversial. As is discussed above, there are questions about the independence of deputees because of their connections in the police and, in most cases, will ultimately have to return to the police. Whilst Sichrem recognises the importance of police expertise, it believes that a significant proportion of additional investigators should be drawn from a non-police background. Further, in the event that Commission investigators are recruited from the police, Sichrem calls upon the State Government to permanently transfer willing volunteers rather than deputing them. So long as such individuals were barred from further employment with the police, such a solution would mean that there is no danger that their independence would be compromised by thoughts of future career advancement.<sup>55</sup>



Although Sichrem is of the view that the Commission's investigation capabilities should be strengthened through permanent hires, this should also be accompanied by the creation of a pool of investigators who can be called upon on a case by case basis. This pool would consist of relevant experts with proven integrity including academics, lawyers and medical professionals. This option would not only help ensure the independence of investigations, but would also ensure that individuals with appropriate skills are recruited to investigate each violation. Furthermore, this may even reduce costs in that the services of such investigators would only need to be secured as and when they are required.

### **The Bangalore bias**

The Commission is failing Kannadigas outside of Bangalore city. During the period from July 2007 – March 2009, 35.2 % of complaints received came from the Bangalore Urban district despite the fact that this district only accounts for 12.4% of Karnataka's population.<sup>56</sup> During both the 2007-2008 and 2008-2009 reporting periods, 22 of Karnataka's 26 remaining districts (for which there are population figures) were underrepresented in terms of the complaints dealt with by the Commission.<sup>57</sup> It is unlikely that this discrepancy is due to a lower prevalence of human rights violations in those districts. On the contrary, various studies show that human rights violations in relation to domestic violence<sup>58</sup> and caste atrocities<sup>59</sup> are frequently more common in rural areas. The higher percentage of complaints received from the Bangalore Urban district is most likely due to the fact that the Commission is based in Bangalore city and because human rights defenders dealing with human rights violations are better organised and more numerous in Bangalore city. This discrepancy has not escaped the notice of Sichrem or the other human rights defenders interviewed, many of whom realise the difficulties faced by potential complainants outside of Bangalore city.<sup>60</sup>

On its own admission, the Commission has no machinery in place to investigate complaints that originate in districts outside of Bangalore city.<sup>61</sup> This means that even when a complainant outside of Bangalore city manages to file a complaint, it is less likely to be attended to than a complaint that relates to an incident in Bangalore city.<sup>62</sup> The Commission is not blind to this problem, and Member Parthasarathy informed the press that the State Government has been requested to set up branches in the districts of Davangere, Gulbarga, Belgaum, Dakshina Kannada and Mysore.<sup>63</sup> However, no action has yet been taken by the State Government. In the meantime, the Commission could help to improve the situation by holding sittings, where complaints would be heard, in districts outside

of the Bangalore Urban district.<sup>64</sup> Although there have been some efforts to hear specific complaints in the districts, the approach to date has been piecemeal and a more focused effort is needed.<sup>65</sup>

### **A toothless tiger?**

Based upon its evaluation of a complaint, the Commission can issue an 'order' in which it makes recommendations to the State Government, but the Commission has no power to enforce such recommendations. The Commission frequently makes recommendations to the State Government ranging from recommendations that compensation should be paid to victims to recommendations that individuals should be prosecuted.<sup>66</sup> On the receipt of an inquiry report and the accompanying recommendations, the State Government is under an obligation to forward its comments to the Commission along with details of actions that have been taken or are proposed to be taken as a result of such recommendations.<sup>67</sup> Furthermore, when placing the annual report of the Commission before the State Legislature, the State Government also has a duty to file an 'Action Taken' report setting out its reasons in the event that recommendations of the Commission are not complied with.<sup>68</sup> The Commission also has certain other powers under the PHRA 1993 to try and secure compliance with its orders.<sup>69</sup> Due to the fact that there is only limited information about the Commission in the public arena, it is not possible to give an overview of the extent to which the State Government complies with the Commission's orders, whether time limits are complied with in the event of non-compliance or of the actions that the Commission takes to try and secure compliance. Nor is it possible to gauge whether the State Government is complying with its duty to properly respond to the inquiry reports with details of what actions have been taken or are proposed to be taken. The fact that the Commission is unaware whether the State Government has laid its First Annual Report and an accompanying 'Action Taken' report before the State Legislature is not encouraging.<sup>70</sup>

Whilst it is not possible to gain an overview of the State Government's compliance with the Commission's recommendations, some conclusions can be drawn from the individual complaints that the Commission has mentioned in its annual reports. The Commission includes a description of nine complaints in its First Annual Report<sup>71</sup> and gives an update on those cases in the Second Annual Report.<sup>72</sup> In the case of six of the nine complaints, the State Government or relevant authority has fully complied with the Commission's recommendations. For example, the State Government complied with the Commission's order to pay compensation to the orphaned child of a couple killed due to a Naxal attack in



Chikamangalur District.<sup>73</sup> In contrast, as at 31 March 2009, the State Government had failed to comply with an order given in 2007-2008 to pay compensation to the family of a girl whose death was partly due to the negligence of the Revenue, Forest, Mines and Police Department.<sup>74</sup> Similarly, as at 31 March 2009, the State Government had failed to comply with the Commission's order given in 2007-2008 to pay the salaries of the staff at a primary school, who had not been paid for over four years, and to discipline the people responsible for this failure.<sup>75</sup> The Commission describes the State Government's response to its recommendations as "*quite encouraging*"<sup>76</sup>, but an analysis of the Second Annual Report reveals that there are reasons to be discouraged even after only reviewing the limited examples given.

In Sichrem's experience, there is significant evidence to suggest that the Commission's orders are often not complied with. For example, by way of an order dated 18 July 2009,<sup>77</sup> the Commission instructed the State Government to pay interim compensation of 500,000 Rupees to the parents of Manjunath who died while in the custody of R.T. Nagar Police. The State Government was also directed to instruct the Central Bureau of Investigation to investigate. The deadline for carrying out these actions was one month, but as at the date of this report, the victim's parents have not received any compensation and are unaware whether any investigation has been started. PUCL-K has also come up against a failure on the part of the State Government to follow the orders of the Commission. In one particular instance, the Commission made a recommendation to the State Government on the basis of a suo motu investigation that the Superintendent of Police and certain other police officials in the Dakshina Kannada District Police unit should be transferred due to their failure to act against certain factions who had appointed themselves as the moral police of the populace.<sup>78</sup> The State Government failed to take any action in this respect and even when there was finally a reshuffle of police officials, the police were keen to clarify that "*the present change of guard had nothing to do with recommendations of the Karnataka State Human Rights Commission, which had sought a reshuffle of police officials after attacks on churches in the district and again after the attack on a pub in the city.*"<sup>79</sup>

The current system, in which the State Government's compliance with the Commission recommendations is optional, is clearly failing the people of Karnataka. Member Parthasarathy said as much when he issued a statement to a group of presspersons after holding a district-level officers' meeting that the "*Chances are that the recommendations [of the Commission] may not be taken seriously or the cases get caught up in*

legal tangles.”<sup>80</sup> It is presumably this failure on the part of the State Government that has prompted the Commission to seek prosecution powers.<sup>81</sup> The Commission also has the power, and ought to use this power more frequently, to obtain a court order for compliance of its recommendations by the State (section 18(2) of the Human Rights Act, 1993). Sichrem and the other human rights defenders consulted as part of this survey<sup>82</sup> were unanimous in their view that the decisions of the Commission should be binding. In addition, Sichrem is of the opinion that the Commission should be able to refer cases directly for prosecution and that it should have its own pool of money provided by the State Government from which compensation awarded to victims could be directly paid.

## HUMAN RIGHTS EDUCATION

The PUCL-K makes a powerful argument in favour of human rights education by asserting that the main problem is that “...people have not understood that we are in a Democracy...” and have not “...learnt to assert themselves because they are not educated.”<sup>83</sup> Furthermore, as the Commonwealth Human Rights Initiative identifies, developing a human rights culture is a key strategy to combating human rights abuses, because a human rights aware society does not accommodate violations.<sup>84</sup> In light of the fact that the value of human rights education is recognised both among human rights organisations working at a state and national level, it is surprising how little effort the Commission has made to discharge its duties to both promote human rights awareness amongst different sections of society and to promote awareness of the safeguards available for the protection of human rights.<sup>85</sup> The Commission has not issued any publications or run any training sessions to inform Kannadigas of their rights. This leaves the public entirely dependent upon word of mouth and the expertise of NGOs and other institutions. In fact, the only activity in the educational arena seems to be the issuance of a publication to the police<sup>86</sup> and the holding of a number of regional workshops, of which all but two appear to have been aimed at the police.<sup>87</sup> Whilst the education of the police is an important area, it does not constitute promoting human rights awareness amongst all sections of society as required by law.

The Commission would undoubtedly argue that this shortfall is due to a lack of staff and resources and Sichrem has sympathy with this and calls upon the State Government to provide the Commission with the resources it needs. However, the Commission needs to recognise that this argument cannot be an excuse for inaction. As will be discussed in more detail below, the Commission is not harnessing the potential for cooperation with NGOs



and civil society groups in the field of human rights education. As mentioned above, the Commission has failed to develop a website, which has great potential to be used to communicate information about the complaints procedure and human rights education in general. Both of these steps would not require a significant financial outlay on the part of the Commission, but neither of them has yet been taken. Once adequate funding is in place, Sichrem urges the Commission to produce more printed material in both Kannada and English and to use billboards to help improve awareness about the complaints procedure and human rights in general.

## RELATIONS WITH OTHER BODIES

### Coordination with the NHRC

It has been impossible to gauge the extent to which the Commission coordinates its activities with the NHRC. This is an important question because without coordination, there is a danger that the NHRC and the SHRCs could work at cross-purposes. Other commentators have noted that despite the fact that they have very similar functions, the NHRC does not coordinate its operations with the SHRCs in any formal way.<sup>88</sup> Under the PHRA 1993, the NHRC has no supervisory function over the SHRCs and the situation in the past has been that, at best, it invites the Chairpersons of the SHRCs for biannual coordination meetings.<sup>89</sup> Furthermore, the NHRC has previously monopolised opportunities for participation in national and international meetings, conferences and capacity building programmes.<sup>90</sup> It would have been valuable for the Commission to have given its perspective on this issue, and Sichrem urges it to clarify the situation.

### Encouraging the efforts of NGOs?

The PHRA 1993 obliges the Commission to encourage the efforts of NGOs and institutions working in the field of human rights.<sup>91</sup> The Commission is not adequately discharging this duty and, by doing so, is failing to draw upon a vital resource. Civil society groups could offer the Commission many hundreds of eyes especially in remote areas. Furthermore, civil society collaborations could also provide the Commission with other means to cross check facts and circumstances instead of simply relying on police or district administrations.<sup>92</sup> Collaborations with NGOs in the field of human rights education could be another way in which the Commission could work together with civil society. Sichrem has a good relationship with the Commission and has generally found its staff to be helpful and receptive to complaints. However, there have been no attempts on the part of the Commission to proactively engage with NGOs in Karnataka. Despite requests from Sichrem, the Commission has failed to set up a state level equivalent

to the NHRC's National Core Group of NGOs to allow NGOs and other institutions to coordinate with the Commission and to share their expertise. By showing that it is willing to make the most of resources available to it for free, the Commission would greatly strengthen its argument that the State Government needs to allocate it with more resources.

## Relationship with the State Government

Although the Commission's interactions with the State Government have been discussed throughout this report, it is useful to bring these threads together in one place. As previously mentioned, in its Second Annual Report, the Commission describes the State Government's response to its recommendations as "*quite encouraging*".<sup>93</sup> In contrast, Sichrem sees the State Government's attitude to the Commission as being characterised by neglect and, at times, outright hostility.

Despite the fact 16 years have passed since the introduction of the PHRA 1993 and despite the existence of 16 other SHRCS, the Karnataka State Government only set up the Commission because its hand was forced by the High Court of Karnataka.<sup>94</sup> The Commission had to function from temporary premises when it was first formed and, as previously discussed, its current premises are still inadequate. The State Government has allocated insufficient staff to the Commission and does not even exercise the courtesy to consult the Commission before deputising certain staff.<sup>95</sup> Requests for further staff and accommodation seem to have generally been ignored<sup>96</sup> and there are frequent instances when the State Government ignores the Commission's recommendations.<sup>97</sup> The Commission does not even know whether its First Annual Report has been discussed by the State Legislature and whether an 'Action Taken' report has been filed explaining why certain of the Commission's recommendations have not been complied with.<sup>98</sup>

On a number of occasions, members of the State Government have publicly criticised the Commission for fulfilling its role. In one recent instance, V Dhananjay Kuma, Representative of the Karnataka government in New Delhi and senior BJP leader, launched a scathing attack on Chairperson Nayak due to his criticism of the State Government's handling of the flood situation in Karnataka.<sup>99</sup> Chairperson Nayak had labelled the State Government's handling of the situation as "*inefficient*" and also said that if precautionary measures had been taken, the death toll would have been lower.<sup>100</sup> He announced his intention to launch a suo moto case against the State Government to investigate what had gone wrong.<sup>101</sup> In response to Chairperson Nayak's comments, V Dhananjay Kuma asked "*Who is Justice SR Nayak to question the*



government? Who gave him the right to defame the government?"<sup>102</sup> He went on to threaten Chairperson Nayak personally, saying that "It would be better if restricts himself to his limits, or we will disclose his background to the public."<sup>103</sup> It is astounding that such a senior member of the State Government misunderstands the functions and role of the Commission so much that he feels justified in questioning its Chairperson's right to question the actions of the State Government. It is even more worrying that he seemingly feels it is appropriate to blackmail the Chairperson.

The State Government is not the only authority that feels justified in publicly criticising the work of the Commission. On 27 January 2009, the Commission raided Byatarayanapura police station in west Bangalore on the basis of a report that a number of people, including several juveniles, were being illegally detained and that some had been physically assaulted. On 28 January 2009, *DNA*, a Bangalore daily newspaper, reported that Shankar M Bidari, the City Police Commissioner, felt it was unreasonable for the SHRC to raid police stations and make statements that people are being detained illegally.<sup>104</sup> Sri Bidari reportedly then went on to argue that "People have to be interrogated and police will keep them in the police station. How else can we detect crime?" In response to this article, Sichrem filed a complaint about Sri Bidari with the Commission and Sri Bidari was then duly ordered to produce a report giving his side of the incident.<sup>105</sup> In his unpublished report, Sri Bidari simply denied that he had made this statement and accused Sichrem of having made the complaint with 'mala fide intention'. On receipt of this report, the Commission closed the complaint without making any attempt to contact the *DNA* journalist who wrote the article. As far as Sichrem is aware, Sri Bidari has made no attempt to make the journalist correct the supposedly inaccurate article. Nor has he made any attempt to correct similar statements made in the *Times of India* on 31 January 2009.<sup>106</sup>

Sichrem, the human rights defenders questioned for this report and to some extent, the Commission, are united in their view that the State Government does not accord much importance to the Commission and does not take it seriously. As has been demonstrated in this report, this attitude is having an extremely negative impact on the Commission's work, perhaps mainly because it leaves bodies such as the police with the impression that they do not need to comply with the Commission's recommendations.

# Conclusions and recommendations

## Conclusion

Since its formation, the Commission has made significant progress and its work has improved the situation for victims of human rights violations in Karnataka. The Commission has dealt with a large volume of complaints received from the public and NGOs and has taken up a significant number of cases suo moto.

Whilst the Commission does have failings that are solely its own, many of the factors which inhibit its performance are due to the constraints imposed upon it by the PHRA 1993 and the State Government. Much of the good work that has been done has depended upon the talent, independence and integrity of the commissioners and, in particular, upon the Chairperson, Justice Nayak. The PHRA 1993 contains no safeguards to ensure that a Chairperson equalling his independence and quality is appointed to succeed him. Sichrem calls upon the National Government to amend the PHRA 1993 to bring the appointment procedures to the Commission, the NHRC and the other SHRCs fully into line with the Paris Principles.

The Commission's ability to function effectively is connected to the support it receives from the State Government. This situation is undesirable at the best of times, but has been made worse by the occasionally hostile attitude that members of the State Government have towards the Commission. Sichrem calls upon the National Government to make the necessary amendments to the PHRA 1993 to strengthen the NHRC and the SHRCs and provide safeguards which limit the administration's ability to interfere with their affairs. Further, Sichrem requests the State Government puts the interests of Kannadigas first by actively cooperating with the Commission's work.

Sichrem intends to rewrite this report in two years time. It is hoped that the recommendations set out below will have been taken on board and that the Commission will have developed a dialogue with civil society with a



view to encouraging the constructive appraisal of its work.

## Recommendations to the Commission

- Provide adequate human rights education and training to Commission staff.
- Develop a website which includes (as a minimum) the Commission's contact details, details of how to make a complaint, the Commission's annual reports, complaints statistics and human rights publications and materials. The website should also be used to 'publish' inquiry reports together with comments from the State Government and details of actions taken or proposed to be taken as a result of the Commission's recommendations as required by the PHRA 1993.
- Compile an email list of NGOs, civil society group and individuals who are concerned with the Commission's activities. Use this list to distribute the Commission's annual report and other information about the Commission's activities.
- Improve future annual reports by adding statistics about compliance with the Commission's orders, a breakdown of issues to which complaints relate, a breakdown of how Commission funds are spent and any other details that may be necessary to make the Commission fully accountable to the public.
- Analyse inquiry reports, particularly those produced by the police, with a more critical eye. Make full use of the powers under s.17 PHRA 1993 to independently investigate complaints if inquiry reports are late or are unsatisfactory.
- Ensure that a significant proportion of Investigation Division staff have a non-police background.
- Create a pool of independent investigators who can be used on a case-by-case basis to carry out independent investigations. The pool should be made up of individuals who are experts in different areas including lawyers, doctors and human rights defenders.
- Make full use of the media and statutory powers, such as the power under s.18(b) PHRA 1993 to get directions, orders or writs from the Karnataka High Court, to urge the State Government or the relevant authority to comply with Commission recommendations.
- Hold sittings to hear complaints outside of the Bangalore Urban district.
- Fulfil the legal requirement under the PHRA 1993 to prevent human

rights violations through educating different sections of society and through fostering awareness of the Commission and its activities.

- Cooperate with future studies conducted by NGOs with a view to constructively appraising the Commission's work.
- Set up a Core Group of NGOs and civil society groups to encourage coordination and to seek input on the Commission's activities. Draw upon NGOs' expertise to carry out investigations into human rights violations and to carry out educational activities.
- Lobby the State Government, the National Government and the NHRC to follow the recommendations set out below.

### **Recommendations to the State Government**

- Work within the current system to make the appointment process to the Commission open and transparent. Ensure that civil society and the then current Chairperson and Members are consulted. Select commissioners with a view to meeting the pluralism criterion set out in the Paris Principles.
- Give the Commission a budget to hire its own staff or ensure that willing staff are permanently transferred rather than deputed. In any case, ensure that the Commission is consulted before any staff are transferred or deputed.
- Give the Commission complete discretion to recruit, manage and discipline its own staff and deputies.
- Provide the Commission with adequate funding to carry out all of its functions effectively.
- Provide the Commission with additional accommodation in the Bangalore Urban district and work towards the goal of providing the Commission with a building that is geographically separate from other government buildings.
- Provide the Commission with funding and infrastructure to set up branches outside of Bangalore.
- Support the Commission to form a pool of investigators as discussed above.
- Comply with the Commission's recommendations within the given time limit and ensure that other public authorities such as the police also do so. Ensure that comments on inquiry reports and details of actions taken or proposed are provided to the Commission within the



time limits specified by the Commission.

- Make sure that the State Legislature reviews and discusses the Commission's annual report and scrutinises its work. Comply with the legal obligation to produce 'Action Taken' reports and lay these in front of the State Legislature if the Commission's recommendations are not complied with.
- Ensure that members of the State Government refrain from attacking the Commission for carrying out its functions.

### **Recommendations to the NHRC**

- Work to coordinate with the SHRCs to ensure that the work that is done is complementary. Ensure that SHRC are given the opportunity to attend training and capacity building programmes.
- Lobby the National Government to implement the changes set out below.

### **Recommendations to the National Government**

- Amend the PHRA 1993 to make the appointment procedures to the NHRC and the SHRCs compliant with the Paris Principles. In particular, the appointment procedures should be brought into the open and members of civil society should be able to nominate candidates.
- Amend the PHRA 1993 so that the chairpersons of other state commissions concerned with human rights are automatically *ex officio* members of the SHRCs.
- Amend the PHRA 1993 to include the requirement that the NHRC and the SHRCs should be provided with adequate funding to carry out their functions. What constitutes 'adequate' funding should be determined with reference to objective criteria such as the previous volume of complaints received by each commission.
- Amend the PHRA 1993 to specify that the various state governments are obliged to provide funding to hire staff, rather than provide government deputies.
- Amend the PHRA 1993 to make recommendations from the NHRC and SHRCs binding on the National Government and State Governments and to impose penalties upon officials responsible for delay or obstruction. Include an appeals mechanism in the PHRA 1993 so that the National Government and State Governments can appeal against

recommendations.

- Amend the PHRA 1993 so that compensation is paid directly to victims by the NHRC and the SHRCs.

**CONTACT THE KARNATAKA STATE HUMAN RIGHTS COMMISSION  
IF YOU ARE A VICTIM OF, OR WITNESS TO, ANY HUMAN RIGHTS  
VIOLATION**

**Karnataka State Human Rights Commission  
4th FLOOR  
5th PHASE  
MULTI-STOREYED BUILDING  
BANGALORE - 560 001.  
STD: 080-22392200  
Fax: 080-22392206, 22392207  
E-Mail: kshrc2007@gmail.com**



# Notes

1. P Hanumanthappa S/O Late Dasappa v Home Secretary State of Karnataka (WP 12606/2002) 5 December 2006, High Court of Karnataka.
2. First Annual Report of the Karnataka State Human Rights Commission, 2007-8, Government Press, pp.32-33. The Commission includes descriptions of some of the complaints referred by Sichrem in its First Annual Report.
3. Interview with Geeta Menon, Director of Stree Jagruti Samiti, 29 Sept. 2009, p.1; Interview with PB 'Dsa, PUCL-K, 4 Oct. 2009, p.1.
4. Pursuant to s.12(i) PHRA 1993 the Commission is required to "encourage the efforts of non-governmental organisations and institutions working in the field of human rights."
5. Amnesty International's recommendations for effective protection and promotion of human rights, Amnesty International, Oct. 2001, AI Index: IOR 40/007/2001, p.5.
6. The Paris Principles were drafted at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris on 7-9 October 1991.
7. s.21(2) PHRA 1993.
8. s.22 PHRA 1993.
9. See <http://nhrc.nic.in/> for the current commissioners.
10. Lack of political will to carry out police reforms: SHRC Chief, Udayavani, 15 Sept. 2009, <http://www.udayavani.com/showstory.asp?news=0&contentid=680305&lang=1> : For example, on the occasion of the release of the Human Rights Watch report "Broken System: Dysfunction, Abuse and Impunity in the Indian Police", Justice Nayak blamed the failure to implement police reforms on the corruption of the executive.
11. 2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia, Compiled and Printed by the Asian Forum for Human Rights and Development, 2008, p.67.
12. s.3(3) PHRA 1993.
14. Second Annual Report of the Karnataka State Human Rights Commission, 2008-9, Government Press, Bangalore, pp. 10-11; For example, Order No.LAW 20 LAG 2005 dated 28.06.2005.
15. Ibid.
16. Ibid. pp.11-12.
17. Ibid. The staff who are directly employed by the Commission are generally those in the less senior roles such as Personal Assistants/Stenographers, Drivers and Attenders.
18. Ibid. p.5.
19. Ibid.
20. Ibid. p.7.
21. Ibid. pp.8-9. The State Government also failed to consult the Commission before deputing Sri Ganeshan's successor, Sri Seetharam, and before deputing the current Inspector General of Police, Sri Gopalakrishna.
22. s.33 PHRA 1993.
23. Second Annual Report p.76.

24. Ibid. pp.11-12; There are 15 vacant posts at the Commission. It has not been possible to ask why these posts are vacant, but it may be the case that these are posts created by the government that the Commission does not actually need.
25. Ibid. p.13.
26. Ibid. pp. 21-22.
27. First Annual Report p.31. The request for these additional posts was sent to the Secretary to the Government, Law, Justice and Human Rights Department on 4 January 2008. The wisdom of requesting an investigation team staffed by police deputies will be discussed below.
28. Interview with Geeta Menon p.3, Interview with PB'Dsa p.3.
29. Second Annual Report p.49.
30. The SHRC seeks prosecution powers, *The Hindu*, 28 Aug. 2009; <http://www.thehindu.com/2009/08/28/stories/2009082851920300.htm>
31. Second Annual Report p.14.
32. Ibid.
33. Ibid.
34. Ibid.
35. Ibid.
36. It is important to have public data about the issues to which complaints relate because it gives an overview of which authorities are committing the human rights violations reported.
37. There are a number of NGOs and civil society groups who regularly file complaints on behalf of victims with the Commission. It would be easy to collect email addresses from their representatives and start a mailing list that could be used to distribute the Commission's annual report and other information about its activities. Another option would be to follow the Karnataka State Commission for Minorities' approach and develop an online registration facility for NGOs.
38. The Commission notes the amount of the grant from the State Government on pp.14-15 of the First Annual Report and p19. of the Second Annual Report.
39. s.18(f) PHRA 1993.
40. First Annual Report p.27 and Second Annual Report p.44.
41. Second Annual Report p.44.
42. First Annual Report p.28.
43. s.12(a) PHRA 1993.
44. Second Annual Report pp.46-47.
45. First Annual Report pp.28-29.
46. Second Annual Report p.48.
47. Ibid. p.49.
48. HRC No. 560/09.
49. s.17 PHRA 1993.
50. s.14 PHRA 1993.
51. See the reference to p.48 of the Second Annual Report above.
52. 2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia, p.61.
53. "Broken System: Dysfunction, Abuse and Impunity in the Indian Police," Human Rights Watch, August 2009, p.104.



54. Interview with Geeta Menon p.3, Interview with PB'Dsa p.1.
55. Such a change would mirror the rationale behind s.24 PHRA 1993, which forbids the Chairperson or Members of the Commission from taking up further employment with either the Government of India or the Government of a State after the expiry of their term of office.
56. The figures quoted are produced using the breakdown of complaints by district which appears on pp.26-27 of the First Annual Report and on p.43 of the Second Annual Report and the population figures for Karnataka from the 2001 Indian Census.
57. Ibid.
58. International Institute for Population Sciences (IIPS) and Macro International, 2007, National Family Health Survey (NFHS-3), 2005-06: India: Volume I. Mumbai: IIPS. p. 498; 36.1% of rural women aged 15-49 reported that they had experienced physical violence since the age of 15 compared to 28.3% of urban women.
59. Hidden Apartheid: Caste Discrimination against India's "Untouchables," Shadow Report to the UN Committee on the Elimination of Racial Discrimination, Human Rights Watch, February 2007, p.16.
60. Interview with Geeta Menon p.3, Interview with PB'Dsa p.1.
61. Second Annual Report p.66..
62. Ibid. p.66.
63. The SHRC seeks prosecution powers, The Hindu, 28 Aug. 2009.
64. This would be a state level equivalent of the NHRC's practice of holding sittings in different state capitals.
65. Karavali Munjaava, 12 Aug. 2009. For example, Chairperson Nayak visited Karavata to hear complaints about police atrocities.
66. Second Annual Report p.45. In 2008-9 the Commission made disposed of 576 by orders.
67. s.18(e) PHRA 1993.
68. s.28(2) PHRA 1993.
69. For example, under s18(b) PHRA 1993 the Commission can approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary. Due to the Commission's failure to cooperate, it is unclear whether this power is being used. However, as far as Sichrem is aware it has not.
70. Second Annual Report p.1.
71. First Annual Report pp.18-25.
72. Second Annual Report pp.23-28.
73. Ibid. pp.24-25.
74. Ibid. p.25.
75. Ibid. p.27.
76. Ibid. p.1.
77. HRC No 3679.
78. Cultural Policing in Dakshina Kannada, Vigilante Attacks on Women & Minorities 2008-9, A Report by the People's Union for Civil Liberties Karnataka, March 2009, National Printing Press, p. 47.
79. Ibid.
80. The SHRC seeks prosecution powers, The Hindu, 28 Aug. 2009.
81. Ibid.

82. Interview with Geeta Menon p.3; Interview with PB'Dsa p.3.
83. Interview with PB'Dsa p.3.
84. Human Rights Commissions: A Citizen's Handbook, 2nd edition, Commonwealth Human Rights Initiative, 2006, p.40.
85. s.12(h)PHRA 1993.
86. Second Annual Report p. 76.
87. Ibid. p.67 and First Annual Report p.39. During the period July 2007- March 2009, eight regional workshops were organised of which six were for police officers.
88. 2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia, p.67.
89. Ibid. p.66.
90. Ibid. p.67.
91. s.12(i) PHRA 1993.
92. Human Rights Commissions: A Citizen's Handbook, 2006, p.41.
93. Second Annual Report p.1.
94. P Hanumanthappa S/O Late Dasappa v Home Secretary State of Karnataka (WP 12606/2002) 5 December 2006, High Court of Karnataka.
95. Second Annual Report pp.4-9.
96. For example, the Commission's request for more investigative staff on p.31 of the First Annual Report.
97. See section entitled "A toothless tiger" above.
98. Second Annual Report p.1.
99. Dhananjay Kumar warns justice Nayak, DNA, 6 Oct. 2009, [http://www.dnaindia.com/bangalore/report\\_dhananjay-kumar-warns-justice-nayak\\_1295541](http://www.dnaindia.com/bangalore/report_dhananjay-kumar-warns-justice-nayak_1295541).
- 100 Ibid.
101. Ibid.
102. Ibid.
103. Ibid.
104. SHRC raid unreasonable: Bidari, DNA, 28 Jan. 2009.
105. HRC 476/09.
106. Irked SHRC issues notice to top cop, The Times of India, 31 Jan. 2009.











## About SICHREM

SICHREM (South India Cell for Human Rights Education and Monitoring) was established in 1995 by concerned citizens involved with the civil liberties movement in India, as a response to the growing insensitivity to the rule of law. SICHREM's founders believed that the best way to address this need to build a responsible civil society would be through a process of education, sensitisation and intervention. Hence, education and monitoring human rights atrocities are the key programmes of SICHREM.

### A few words about the study

The purpose of this study was to objectively look at the progress of the Karnataka State Human Rights Commission as a means of strengthening the functioning of this human rights organisation.



**South India Cell for Human Rights Education and Monitoring**

*Sichrem is a project of:*

**MANASA Centre for Development and Social Action**

I/ F, Anjanappa Complex, # 35 Hennur Main Road,  
Lingarajapuram, St. Thomas Town Post, Bangalore-560084.

Phone: + 91-80-25473922 / 25804072 - 73,

Fax: +91-80-25492856

E-mail: [contact@sichrem.org](mailto:contact@sichrem.org) / [msichrem@gmail.com](mailto:msichrem@gmail.com)

[www.sichrem.org](http://www.sichrem.org) / [sichrem.wordpress.com](http://sichrem.wordpress.com)